



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 235

[Docket No. FR-5829-F-01]

**Federal Housing Administration (FHA):
Removal of Section 235 Home Ownership Program Regulations**

AGENCY: Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Through this rule, HUD removes the regulations for its Section 235 Program, which authorized HUD to provide mortgage subsidy payments to lenders to assist lower-income families who are unable to meet the credit requirements generally applicable to FHA mortgage insurance programs. Authority to provide insurance to mortgagees under this program was terminated under the Housing and Community Development Act of 1987 and HUD has not provided new mortgage subsidy payments under this program since then. Because the regulations governing this program are no longer operative, they are being removed by this final rule. To the extent that any Section 235 mortgages remain in existence, or second mortgages for the recapture of subsidy payment pursuant to HUD's regulations governing the Section 235 Program (which was reserved by regulatory streamlining in 1995), the removal of these regulations does not affect the requirements for transactions entered into when Section 235 Program regulations were in effect. Assistance made available under the Section 235 Program

will continue to be governed by the regulations that existed immediately before the effective date of this final rule.

DATES: Effective May 4, 2015.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC, 20410; telephone 202-708-1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8389.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1968, the Housing and Urban Development Act of 1968 (Pub. L. 90-448) amended the National Housing Act to add a new section 235 (12 U.S.C. 1715z) (Section 235 Program). This provision authorized the Secretary to provide subsidies to reduce mortgage interest rates to as low as 1 percent and authorized a new credit assistance homeownership program for lower-income families who were unable to meet the credit requirements generally applicable to FHA mortgage insurance programs. HUD promulgated regulations implementing the Section 235 Program on January 6, 1976 (see 41 FR 1176) and codified these regulations in part 235 of title 24 of the Code of Federal Regulations (CFR). However, on February 5, 1988, the Section 235 Program was terminated under section 401(d) of the Housing and Community Development Act of 1987 (Pub. L. 100-242) and HUD ceased to make mortgage subsidy payments available under this program beginning October 1, 1989.¹ In 1995, HUD removed

¹ Although the Section 235 Program was terminated, section 401(d) of the Housing and Community Development Act of 1987 permitted the Secretary to continue to refinance mortgages insured previously under section 235(r) of the National Housing Act. However, no insurance or assistance for new loans has been provided by HUD since October 1, 1989.

much of part 235 from the CFR as part of HUD's effort to eliminate outdated, obsolete, or unutilized regulations, leaving only the parts that were necessary to regulate outstanding loans assisted or insured under the program. (See 60 FR 56498.) As of the date of this publication, there are only two outstanding loans remaining that were assisted or insured under this program.

This Final Rule

Since authority for HUD to provide assistance or insurance to low-income borrowers under the Section 235 Homeownership Program expired on October 1, 1989, HUD is proceeding to remove Section 235 Program regulations codified in 24 CFR part 235.

Loans issued with assistance provided under Section 235 that are still outstanding will continue to be governed by the regulations in effect on May 3, 2015. Accordingly, this rule amends § 1301 (Expiring Programs—Savings Clause) of 24 CFR 200, subpart W (Administrative Matters), and adds a new paragraph (g) to § 200.1301, which preserves the Section 235 Program regulations as in effect prior to the effective date of this final rule, and continues to govern any assistance provided under the Section 235 Program before May 4, 2015.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a final rule for effect, in accordance with HUD's own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is impracticable, unnecessary, or contrary to the public interest. (See 24 CFR 10.1.)

HUD finds that public notice and comment are not necessary for this rulemaking because assistance is no longer being provided under this program and, therefore, the regulations are no

longer operative. For these reasons, HUD has determined that it is unnecessary to delay the effectiveness of this rule in order to solicit prior public comment.

III. Findings and Certification

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)² requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.³ However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.⁴ As discussed above, HUD has determined for good cause that the APA does not require general notice and public comment on this rule and, therefore, the UMRA does not apply to this final rule.

² 2 U.S.C. 1532.

³ 2 U.S.C. 1534.

⁴ 2 U.S.C. 1532(a).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, and under the authority of 42 U.S.C. 3535(d), HUD amends 24 CFR parts 200 and 235 as follows:

PART 200- INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

2. Add § 200.1301(g) to read as follows:

§ 200.1301 Expiring programs—Savings clause.

* * * * *

(g) Any existing loan assistance (including recapture of loan assistance), ongoing participation, or insured loans under the program listed in this paragraph will continue to be governed by the regulations in effect as they existed immediately before May 4, 2015 (24 CFR part 235, 2014 Edition):

(1) Part 235, Mortgage Insurance and Assistance Payments for Home Ownership and Project Rehabilitation (12 U.S.C. 1715z).

(2) [Reserved]

PART 235- [Removed]

3. Remove part 235.

Dated: March 27, 2015

Biniam Gebre, Acting Assistant Secretary for
Housing- Federal Housing Commissioner

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[FR Doc. 2015-07597 Filed: 4/2/2015 08:45 am; Publication Date: 4/3/2015]